

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department on its own motion
into the appropriate regulatory plan to succeed price
cap regulation for Verizon New England, Inc. d/b/a
Verizon Massachusetts' retail intrastate
telecommunications services in the Commonwealth
of Massachusetts

DTE 01-31

TESTIMONY OF

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ON BEHALF OF AT&T COMMUNICATIONS OF NEW ENGLAND, INC.

August 24, 2001

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Deborah S. Waldbaum. My business address is 6400 S. Fiddlers
3 Green Circle, Suite 800, Englewood, Colorado.

4
5 **Q. WHAT IS YOUR OCCUPATION?**

6 A. I presently am employed as a Senior Attorney in AT&T's Law and Government
7 Affairs unit. In this position I represent the Local Network Services business unit,
8 including clients responsible for the provision of local service and the Local
9 Service and Access Management ("LSAM") organization. I also work directly
10 with the managers who are responsible for identifying and implementing
11 opportunities to reduce AT&T's current payments to other carriers (both
12 incumbent local exchange carriers ("ILECs") and other competitive local
13 exchange carriers ("CLECs") for facilities AT&T uses to serve its customers.

14
15 **Q. PLEASE SUMMARIZE YOUR QUALIFICATIONS.**

16 A. I have an A.B., in Sociology from the University of California, Berkeley, and my
17 J.D. from University of California, Hastings College of the Law. I joined AT&T
18 in July 1999. Prior to that time I served as Western Region Regulatory Counsel
19 for TCG, Inc. In that capacity I represented TCG in regulatory proceedings in
20 Colorado, Nebraska, Arizona, Utah, Oregon, Washington and California. In
21 addition, I provided support for negotiations for Interconnection Agreements with
22 Pacific Bell and GTE. I also participated in the interconnection negotiations and
23 arbitrations of interconnection agreements with U.S. West (now Qwest). Prior to
24 joining TCG, I served as an Assistant Attorney General in the Colorado

1 Attorney's General, where I represented the Office of Consumer Counsel in both
2 telecommunications and energy regulatory proceedings.

3

4 **Q. HAVE YOU PREVIOUSLY PARTICIPATED IN PROCEEDINGS**
5 **BEFORE THE DEPARTMENT OF TELECOMMUNICATIONS AND**
6 **ENERGY ("DEPARTMENT" OR "DTE")?**

7

8 A. No.

9

10 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

11 A. The purpose of this testimony is to respond to assertions by Verizon witnesses
12 that sufficient competition exists in local exchange service markets to justify
13 pricing flexibility. My testimony demonstrates that AT&T and other CLECS do
14 not have the ability to switch their special access services to UNEs, even where
15 AT&T and CLECs provide a significant amount of local service. In this way,
16 AT&T and CLECS must pay considerably more than the economic cost for these
17 facilities. I also explain how the three "safe harbors" identified by the Federal
18 Communications Commission ("FCC") in its June 2000, Supplemental Order
19 Clarification of its November 1999 UNE Remand Order and Supplemental Order,
20 fail to provide a means by which AT&T and CLECs can convert special access
21 circuits to UNEs. This inability on the part of CLECS to switch special access
22 services to UNEs presents a significant barrier to entry in the local business
23 market and, therefore, demonstrates that sufficient competition does not exist to
24 warrant approval of Verizon's Alternative Regulation Plan.

1 **Q. HOW DOES AT&T TYPICALLY PROVIDE LOCAL SERVICE TO**
2 **BUSINESS CUSTOMERS?**

3
4 A. AT&T offers several types of local service to large and medium-sized business
5 customers, including the AT&T Digital Link and AT&T Prime families of
6 services. In order to provide these services, AT&T must, in most cases, use DS1
7 and/or DS3 facilities provided by incumbent LECs to provide the portion of the
8 service between the customer's premises and the customer's local serving office
9 ("LSO"). AT&T often purchases these facilities as special access services. As a
10 result, AT&T must pay considerably more than the economic cost for these
11 facilities. Shortly before the FCC issued its *UNE Remand Order*,¹ AT&T's
12 national Local Service and Access Management ("LSAM") organization
13 established a project to identify a plan to convert our current Special Access DS1
14 services purchased from ILECs to unbundled network elements ("UNEs") that
15 provide the same functionality. At that time, I was designated to provide legal
16 support for the project. The conversion of existing special access circuits to
17 UNEs was seen as consistent with the requirements of the Telecommunications
18 Act of 1996 (and the FCC's own analysis of the law in its *Local Competition*
19 *Order*), and a reasonable approach to lowering AT&T's costs of leased facilities.
20 When the LSAM organization began planning the conversion project, AT&T's
21 initial plan was to focus its efforts on converting to UNEs the ILEC special access
22 circuits it was using in whole or in part to provide its customers with local service.

¹ Third Report and Order, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd. 3696 (1999) (*UNE Remand Order*).

1 **Q. WHAT HAS DRIVEN AT&T TO CONTINUE TO USE SPECIAL ACCESS**
2 **FACILITIES TO PROVIDE LOCAL SERVICE, DESPITE THE HIGHER**
3 **COST OF USING THESE SERVICES AS COMPARED TO UNES?**

4
5 A. AT&T's use of special access trunks to provide local service has been driven, in
6 large part, by the history of the development of competitive local service. Prior to
7 the 1996 Act, competitive access providers ("CAPs") typically used a
8 combination of their own facilities and leased ILEC facilities to provide
9 alternative access. One such CAP was Teleport Communications Group
10 ("TCG"), which AT&T acquired in 1998 and whose facilities are the core of the
11 infrastructure AT&T uses to provide local services to business customers. Before
12 the 1996 Act was passed, the only way a CAP could obtain facilities from an
13 ILEC was through the ILECs' access tariffs.

14 As CAPs such as TCG were transformed and grew into CLECs and the
15 scope of their service offerings expanded, their need for connectivity between
16 customer premises and their own switches also grew, far beyond their ability to
17 provision their own facilities. Moreover, despite the passage of the 1996 Act, the
18 practice of using special access circuits to provision local as well as long distance
19 service continued for many reasons. First, many ILECs did not establish cost-
20 based prices for these types of facilities so they could be purchased as UNEs.
21 Indeed, some ILECs still have not established UNE prices for such facilities. In
22 such cases, CLECs had (and sometimes still have) no choice but to acquire the
23 necessary functionality as special access. Moreover, the process of ordering and
24 provisioning UNEs was (and often still is) far more cumbersome and costly than
25 the process for special access, for many reasons: the state of OSS interfaces and

1 other operational issues, difficulty in obtaining collocation space, disputes over
2 the ability to obtain high capacity facilities as unbundled elements, and lack of
3 ILEC cooperation.

4

5 **Q. HAS AT&T BEEN ABLE TO CONVERT ITS SPECIAL ACCESS**
6 **SERVICES TO UNES?**

7

8 A. Based on the guidance provided by the Commission's *UNE Remand Order* and its
9 follow-on *Supplemental Order*,² AT&T attempted to convert to UNEs only those
10 special access circuits that it used to provide local service. But this process met
11 with strong opposition from all ILECs, both in terms of reaching agreement on the
12 facilities that could be converted, and the process by which such conversions
13 could take place.³ But one thing that has become clear in the marketplace is that
14 customers will generally not wait for service. The retail customer is generally
15 seeking to fulfill critical business needs it has and, therefore, will have little
16 patience or inclination to select a carrier with a lengthy service delivery interval
17 (as might be required if a CLEC tries to provide its service using UNEs rather
18 than special access) – even if the longer interval offers substantial cost reductions
19 for the carrier.

20

² Supplemental Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 9698, FCC 99-379 (Nov. 24, 1999).

³ AT&T was particularly concerned with ILEC proposals that called for a disconnection and re-connection of the facilities presently serving customers. Additionally, AT&T faced significant opposition to its proposals to convert such facilities on a "project" basis.

1 **Q. ARE THERE ANY OPTIONS FOR A CLEC WHO WANTS TO SWITCH**
2 **ITS SPECIAL ACCESS FACILITIES TO UNES?**

3
4 A. On June 2, 2000, the FCC released its *Supplemental Order Clarification*.⁴ In that
5 Order, the Commission established three so-called “safe harbors” pursuant to
6 which a requesting carrier can convert existing special access circuits to UNEs.

7
8 **Q. WHAT EFFECT DOES THE FCC’S ESTABLISHMENT OF “SAFE**
9 **HARBORS” HAVE ON AT&T’S ABILITY TO SWITCH SPECIAL**
10 **ACCESS SERVICES TO UNES?**

11
12 A. Upon the release of the *Supplemental Order Clarification*, AT&T began an
13 analysis of the three safe harbor options outlined by the Commission and
14 attempted to assess its ability to implement them. Clearly, AT&T is highly
15 motivated to convert these facilities to UNEs in order to realize substantial cost
16 savings. However, despite this incentive, these options have proven almost
17 impossible to satisfy. As a result, AT&T has been unable to convert to UNEs
18 even the special access facilities that it uses to provide its customers with
19 significant amounts of local exchange service.

20
21

⁴ Supplemental Order Clarification, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 00-183 (June 7, 2000).

1 **Q. WHAT ARE THE THREE “SAFE HARBORS” TO WHICH YOU ARE**
2 **REFERRING?**

3
4 A. The first “safe harbor” allows a carrier to convert facilities if it certifies that it is
5 the *exclusive* provider of end user’s local exchange service and the facility
6 providing the service terminates in a collocation arrangement.

7
8 **Q. HAS AT&T BEEN ABLE TO USE THIS FIRST SAFE HARBOR?**

9
10 A. No. Despite providing significant local services to numerous businesses, AT&T
11 cannot convert existing circuits under this option for several independent reasons.
12 First, most large to mid-sized business customers choose AT&T local service, or
13 service from another CLEC, in order to take advantage of network diversity.
14 These customers perceive an advantage in having service from *multiple* providers
15 in order to ensure connectivity to the outside world even if there are temporary
16 constraints or problems on any one provider’s network. Thus, they typically do
17 not use AT&T (or any CLEC) as their sole local service provider.⁵ Moreover,
18 they generally are reluctant (or would simply refuse) to disclose to one CLEC any
19 information other than the fact that they have more than one local service
20 provider.

21 Next, any requirement that a customer use *only* AT&T service is simply
22 contrary to the notion of competition. In order to qualify for this option, AT&T

⁵ In fact, not all types of local services provided by AT&T are even intended to be used as the customer’s sole source of service. For example, limitations on the Class 4 switches used to provide AT&T Digital Link typically require that the service not be marketed as the customer’s only service, but rather as an alternative to some of the services previously provided by the incumbent.

1 would have to require customers to purchase only AT&T local service in order to
2 be eligible to receive AT&T's competitive service. AT&T would have to require
3 customers to enter into exclusive contracts that could only be enforced by audits
4 and litigation. And even then, the FCC prohibits such exclusive contracts for the
5 approximately one million commercial multiple tenant locations around the
6 country.⁶ These methods simply would not be compatible with the notion of good
7 customer relationships. In sharp contrast, ILECs can use the same UNEs to offer
8 the same customer the same service without requiring exclusivity and still be
9 assured that their costs will not change just because the customer has more than a
10 single local service provider.

11 Further, AT&T salespeople confirm that customers demand the flexibility
12 to change both the amount of service purchased from any one provider and the
13 number of providers they use, so they can obtain the most advantageous mix of
14 service, quality and price. These same customers also want to be able to make
15 their purchase decisions without having to disclose whether they use other service
16 providers. As a result, AT&T is generally precluded from certifying, or even
17 knowing, that it is (and will continue to be) a customer's only local service
18 provider. Thus, the first safe harbor is, as a practical matter, simply unavailable to
19 AT&T and other CLECs.

⁶ First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57, *Promotion of Competitive Networks in Local Telecommunications Market, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Review of Sections 68.104, and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network*, 2000 FCC LEXIS 5672 (rel. Oct. 25, 2000).

1 **Q. WHAT ARE THE SECOND AND THIRD SAFE HARBORS, AND HAS**
2 **AT&T BEEN ABLE TO USE THESE SAFE HARBORS TO SWITCH**
3 **SPECIAL ACCESS FACILITIES TO UNES?**

4
5 A. The FCC's second and third safe harbor options require a carrier to certify that it
6 provides local exchange and exchange access to the end user's premises at a
7 particular level and in a particular configuration. The second option, for example,
8 requires the carrier to handle at least one-third of the end user's local traffic
9 measured as a percentage of total end user customer local dial tone lines. Under
10 this option, the carrier must certify for DS1 circuits and above that 50% of the
11 activated channels on the loop portion of the facility have at least 5% local voice
12 traffic, and the entire loop has 10% local traffic. In addition, the facility must
13 terminate in a collocation arrangement, and the carrier may not connect the loop-
14 transport combination to the ILEC's tariffed services. Similarly, the third safe
15 harbor requires a carrier to certify that at least 50% of the activated channels on a
16 circuit are used to provide originating and terminating local traffic, and that 50%
17 of the traffic on each local dial tone circuit must be used to provide local voice,
18 and that 33% of the entire loop facility must be used to provide local voice traffic.

19 Both the second and third options, therefore, rely on the notion that usage
20 is measured at the customer's premises as well as measured at the interface of
21 each multiplexing function. However, this assumption is completely contrary to
22 existing measurement techniques and capabilities.

23 The second and third options require a carrier to certify usage both on the
24 loop overall and the loop's time slots individually. However, the safe harbors'
25 requirement of certification of such complex mixes of local traffic levels bears no

relationship to what can be measured in an efficient network configuration. For example, in the “EEL” configuration, the individual loops (that may be from a variety of locations in a local serving office) are multiplexed onto a higher capacity facility. Although the loops might each have distinct uses, at any one time, any of those loops could be carrying all local traffic, no local traffic, or no traffic at all. Thus, any attempt to monitor that traffic would require the ability to monitor traffic at the end user’s premise and at the point of multiplexing – neither of which are points where AT&T deploys equipment to record usage.⁷ The only alternative would be substantial network reconfiguration that required the use of facilities that are restricted to a particular jurisdictional type of traffic. Such a reconfiguration effort would be prohibitively expensive, both because it would be costly to implement and because it would introduce substantial inefficiencies into AT&T’s network operations.

Q. WHY HAS AT&T BEEN UNABLE TO COMPLY WITH THESE THREE SAFE HARBORS?

A. Despite substantial effort on the part of AT&T to meet the conditions required by the three safe harbor options, they have proved unworkable for many reasons, including customer disruptions, system limitations, the significant costs of system modifications that would be necessary to meet the certification process, and

⁷ While the usage can be captured at the switch, no means currently exists to associate that usage with a particular EELs configuration (as opposed to other loop configurations which would not be subject to monitoring) or the time slot that is employed for a particular customers call within a piece of equipment that is provided by the ILEC as a UNE. Beyond the preceding difficulty, the classification of usage as local versus non-local must still be overcome.

1 network inefficiencies implicit in the prohibition on “co-mingling” of UNE loops
2 or loop-transport combinations with tariffed special access services. In particular,
3 the overall design of the safe harbors is based on a series of assumptions that are
4 contrary to basic principles of network design and operation.

5

6 **Q. WHAT ARE THESE INCORRECT ASSUMPTIONS?**

7 A. First, and most fundamentally, all of the safe harbors are based on a CLEC’s case-
8 by-case certification of the amount of local traffic that is being carried over the
9 facilities at issue. Such a process assumes – incorrectly – that CLECs like AT&T
10 have the means to collect detailed information on individual customers’ local
11 usage to provide the necessary certification. That is not the case. It is a basic
12 notion of network design that network measurement functionalities are placed at
13 the *switch* end of the loop, rather than at the customer end of the loop or some
14 intermediate point. To our knowledge, this network design is true not only in
15 AT&T’s network, but in the networks of the ILECs and other CLECs. The
16 Commission’s certification process, however, would require measurement
17 capabilities at the *customer* end of the loop, which do not exist today and would
18 be costly and inefficient to implement. Presently available data collection
19 systems simply do not capture the information necessary to demonstrate
20 compliance with the safe harbor options.

21 Second, to the extent that local usage information is maintained at all, such
22 data are generally not in the control of the service provider. The certification
23 required by the *Supplemental Order Clarification* mistakenly assumes that

1 carriers have access to information regarding the customer's total use of
2 telecommunications services, including the number of carriers providing that
3 service, and the level of local traffic the customer generates at a particular
4 location. In fact, this information is generally only available to the customer itself
5 (typically to the customer's telecommunications manager), and is not disclosed to
6 other carriers, much less disclosed on the routine and ongoing basis that would be
7 required under the safe harbor provisions. Third, the certification process
8 underlying the safe harbors ignores the fact that the sophisticated measuring
9 systems that would be needed to begin to comply with the safe harbor conditions
10 are not in existence today, and are not readily available. In addition, AT&T's
11 analysis has revealed that the systems simply cannot be created in a cost-effective
12 manner. This is because it is often not clear whether traffic going to or from a
13 customer's premise is "local." For example, a customer's PBXs can be tied
14 together using DS1 facilities and provide connectivity among various sites using
15 abbreviated dialing. A carrier providing services to such a customer might not
16 record the data, and even if it did, would likely not have the capability to
17 determine whether the traffic was local based on the dialed digits.⁸ It is nearly
18 impossible to identify what terminating usage is local and what is non-local
19 without a burdensome transfer of records between the carrier and its customer,
20 which itself would require extraordinary data processing time and resources, or in
21 the alternative, an inefficient and cost-prohibitive separation of trunk groups.

⁸ It might be possible for a carrier to make this determination if it had access to the routing plan and detailed call records of the customer's network. However, just as with other information within the customer's control, customers typically do not disclose such information.

1 Fourth, the safe harbor options also appear to rely on the assumption that
2 connections within a carrier's network are static. This is simply not true in an
3 efficiently designed network, in which the technological configuration for service
4 is designed to vary the routing of traffic to take advantage of available capacity in
5 the network. Thus, the characteristics of the traffic on any individual facility will
6 vary greatly over time.⁹

7

8 **Q. DOES AT&T'S INABILITY TO USE THESE SAFE HARBORS IN ANY**
9 **WAY AFFECT THE INCUMBENT LOCAL EXCHANGE CARRIER**
10 **("ILEC")?**

11

12 A. Yes. The difficulty of meeting these requirements provides ILECs with
13 substantial opportunity to refuse to allow CLECs to convert existing special
14 access circuits and/or to abuse the audit process permitted by the temporary rules,
15 notwithstanding the FCC's effort to discourage routine invocation of such audits
16 in the *Supplemental Order Clarification*. In spite of AT&T's considerable efforts
17 to identify and convert its special access circuits that are used to provide local
18 service –In many cases going as far as providing the ILEC with a comprehensive
19 list of those circuits – to this point, AT&T has generally been unable even to
20 submit conversion orders, because the ILECs have required conversion orders to

⁹ An example of such efficiencies is a CLEC's use of EELs themselves. In most cases, the EEL used to serve a particular customer does not terminate directly onto the CLEC's local switch. Instead, in order to use (more efficiently) switch resources, intervening electronics are inserted to connect the time slot on the EEL facility to the switch only when that time slot is active. While this is clearly the most efficient and appropriate network design to handle traffic from multiple customers, use of this configuration dramatically complicates a CLEC's ability to monitor traffic to collect the data needed to take advantage of the second and third safe harbors described in the *Supplemental Order Clarification*.

1 specify in writing which safe harbor is being relied on when the order is placed.
2 Although AT&T knows the customers to whom it provides local service, it is
3 virtually impossible to make the detailed certifications contemplated in the safe
4 harbors to actually convert those customers to UNEs. And even if AT&T or other
5 CLECs made such a certification based on some rational estimate of its
6 customers' traffic, the inability to measure such traffic precisely would engender
7 automatic audit requests and endless disputes with the ILEC.

8

9 **Q. PLEASE SUMMARIZE THE EFFECTIVENESS OF THE SAFE**
10 **HARBORS.**

11

12 A. The "safe harbors" defined in the *Supplemental Order Clarification* have
13 completely failed in their purpose. They simply do not provide CLECs with any
14 prospect that they can convert special access circuits to UNEs, even in cases
15 where they in fact use special access circuits to provide a significant amount of
16 local service. The safe harbors have therefore succeeded in only one respect –
17 preventing any erosion in the ILECs' monopoly access profits.

18

19 **Q. BASED ON YOUR CONCLUSION, DO YOU HAVE ANY**
20 **RECOMMENDATIONS FOR THE DEPARTMENT?**

21

22 A. Yes. The Department should deny Verizon's request for deregulation of local
23 business services until all of the inputs, including EELs and other high-capacity
24 loops, are priced at TELRIC UNE rates. While I am uncertain this problem can
25 be addressed within the scope of this proceeding, the Department can address the

1 pricing issue by making findings in an appropriate docket pursuant to the FCC's
2 Local Competition First Report and Order, and reaffirmed in the FCC's Local
3 Competition Third Report and Order, that due to local market conditions, Verizon
4 should be required to offer these facilities at UNE prices.

5

6 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

7 **A. Yes.**